

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

_____)	
In the Matter of)	
)	Docket No. 9315
EVANSTON NORTHWESTERN)	
HEALTHCARE CORPORATION,)	Public Version
)	
a corporation.)	
_____)	

**JOINT MOTION FOR EXTENSION OF
TIME AND LENGTH OF APPEAL BRIEFS**

Complaint Counsel and Respondent respectfully request that the Commission grant this Joint Motion for Extension of Time and Length of Appeal Briefs established by FTC Rule of Practice § 3.52. Due to the length and complexity of the record in this matter, the important issues it presents, and the impending holiday schedule, the parties request a reasonable extension of both time and length (word) limits in order to more effectively brief this matter to facilitate the Commission’s review on appeal.

Due to the limited time frame in which initial briefs are due to be filed, the parties respectfully request expedited consideration of this motion, pursuant to FTC Rule of Practice § 3.22(d). In support of this request, the parties state the following:

Procedural History

1. The Complaint in this matter was issued on February 10, 2004. An eight week trial was held between February 2005 and April 2005 before Administrative Law Judge Stephen J. McGuire. The trial included live testimony from over 40 witnesses, including 35 live trial witnesses and eight witness who testified by deposition. During the 30 trial days over 1,600 exhibits were entered into evidence and over 6,000 pages of trial transcripts were created.

2. Based on a finding of extraordinary circumstances, Judge McGuire extended the deadline for filing an initial decision on February 9, 2005, April 6, 2005, June 8, 2005, August 8, 2005, and October 7, 2005. Judge McGuire's orders were based in part on the need for additional time to review the extensive record.

3. On October 21, 2005, Judge McGuire issued his initial decision finding that Respondent had violated Section 7 of the Clayton Act and ordered divestiture. Judge McGuire's initial decision and order are 225 pages in length and contain over 1,000 findings of fact.

4. Respondent was served with the Initial Decision on October 24, 2005 and filed a timely notice of appeal on October 26, 2005. Complaint Counsel was served with the Initial Decision on October 24, 2005 and filed a timely notice of cross-appeal on October 28, 2005. Under the current briefing schedule established by the FTC rules, the parties are required to file appeal briefs based on the following schedule:

- Respondent's Appeal Brief is due on or before November 23, 2005;
- Complaint Counsel's Response and Cross-Appeal Brief is due on or before December 23, 2005;
- Respondent's Reply and Cross-Appeal Response Brief is due on or before January 23, 2006.

- Complaint Counsel's Cross-Appeal Reply Brief is due on or before January 30, 2006.

Request for Extension of Time

5. The underlying factual issues in this case are numerous and complex. The trial testimony from 43 witnesses included seven experts and dozens of fact witnesses including hospital representatives, managed care company representatives, physicians and other licensed medical professionals, financial consultants and community leaders. All of this testimony must be carefully reviewed in order to thoughtfully prepare appeal briefs in this matter. The additional time is necessary in order to appropriately address the myriad of issues raised in this important case in the context of the extensive record on appeal. The additional time will enable parties to prepare briefs that will further assist the Commission in its review of the disputed issues in this matter.

6. The parties' request for an extension of time is further necessitated by the upcoming holiday season. The parties submit that the current briefing schedule would substantially interfere with long-standing family commitments and travel plans of some of the counsel involved in this matter related to the Thanksgiving, Christmas, Chanukkah, and New Year's holidays. Such inconvenience and hardship has been previously recognized by this Commission as part of the basis for granting extensions of time. *See In re Telebrands*, Dkt. No. 9313 (Order Granting Motion for Extensions of Time to File Appeal Briefs, October 19, 2004) (available at <http://www.ftc.gov/os/adjpro/d9313/index.htm>); *In re North Texas Specialty Physicians*, Dkt. No. 9312 (Order Granting Motion For Extensions of Time to File Appellate Briefs, December 10, 2004) (available at <http://www.ftc.gov/os/adjpro/d9312/index.htm>).

7. The parties respectfully request a reasonable extension of time in which to file their appeal briefs. The parties have agreed to jointly propose the following briefing schedule:

- Respondent's Appeal Brief shall be filed on or before December 16, 2005;
- Complaint Counsel's Response and Cross-Appeal Brief shall be filed on or before February 3, 2006;
- Respondent's Reply and Cross-Appeal Response Brief shall be filed on or before March 15, 2006;
- Complaint Counsel's Cross-Appeal Reply Brief shall be filed on or before April 5, 2006.

8. The parties submit that the minimal extension of time will permit a more considered briefing of the issues before this Commission and still allow the Commission opportunity to complete all briefing and schedule an oral argument within a reasonable time frame.

Request for Extension of Length

9. The parties further request a reasonable extension of the word limitations established by FTC Rule § 3.52. The parties assert that a word extension is proper due to the lengthy trial record and complex underlying factual issues.

10. As shown by the post-trial briefing of the parties, the issues in this case are technical and complex. The parties submitted a combined total of nearly 300 pages of post-trial briefs accompanied by over 5,000 proposed findings of fact -- more than 2,500 each for Complaint Counsel and Respondent. Judge McGuire's initial decision in this matter is over 225 pages in length -- single spaced -- and contains over 1,000 findings of fact. A reasonable extension of the word limitation will assist the parties to better present the issues on appeal to the Commission.

11. The parties have agreed to jointly propose the following word limitations:
- Respondent's Appeal Brief shall be limited to 30,000 words, but is not to exceed 100 pages;
 - Complaint Counsel's Response and Cross-Appeal Brief shall be limited to 42,000 words, but is not to exceed 140 pages;
 - Respondent's Reply and Cross-Appeal Response Brief is limited to 30,000 words, but is not to exceed 100 pages;
 - Complaint Counsel's Cross-Appeal Reply Brief is limited to 18,000 words, but is not to exceed 60 pages.


These word and page limitations are all based on the same proportional adjustments to the word limitations prescribed for the appeal and cross-appeal briefs by FTC Rule § 3.52.

12. In reaching this stipulation, the parties have specifically used an estimate of 300 words per page. The parties are aware that in at least one instance the Commission has used a 250 word per page estimate. Based on the parties' own review of other briefs in this matter, however, it has been determined that the average word per page count has likely exceeded 250 words without compromising the clarity or readability of the briefs. Accordingly, the parties have estimated 300 words per page in order to effectuate their intent that the briefs not exceed the stated page limits. Both the word count and the page limits are an integral part of this joint motion.

13. This Commission has previously granted reasonable requests for even greater word count extensions based on factors similar to those present in this case. *See In re Rambus*, Dkt. No. 9302 (Order Granting Extensions of Time to File Appellate Briefs and Increase in Word Count Limits March 18, 2004) (available at <http://www.ftc.gov/os/adjpro/d9302/index.htm>).

CONCLUSION

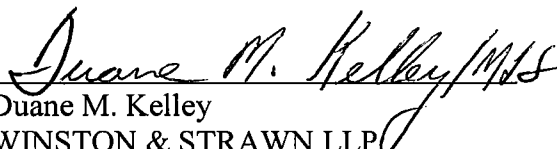
For the reasons stated above, the parties respectfully request that this Joint Motion for Extension of Time and Length of Appeal Briefs as agreed to by the parties be granted.



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Date: October 28, 2005

**UNITED STATES OF AMERICA
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COMMISSIONERS: Deborah Platt Majoras, Chairman
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**ORDER GRANTING JOINT MOTION FOR
EXTENSION OF TIME AND LENGTH OF APPEAL BRIEFS**

Upon consideration of the parties Joint Motion for Extension of Time and Length of Appeal Briefs it is hereby ORDERED that the Motion is GRANTED. The parties shall file their appeal briefs based on the time and word limitations detailed below:

- Respondent's Appeal Brief shall be filed on or before December 16, 2005 and be limited to 30,000 words, but is not to exceed 100 pages;
- Complaint Counsel's Cross-Appeal and Response Brief shall be filed on or before February 3, 2006 and be limited to 42,000 words, but is not to exceed 140 pages;
- Respondent's Response and Reply Brief shall be filed on or before March 15, 2006 and be limited to 30,000 words, but is not to exceed 100 pages;

- Complaint Counsel's Rebuttal Brief shall be filed on or before April 5, 2006 and be limited to 18,000 words, but is not to exceed 60 pages.

Dated: October __, 2005

By the Commission

Donald S. Clark, Secretary

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2005, copies of the foregoing Joint Motion for Extension of Time and Length of Appeal Briefs were served (unless otherwise indicated) by email and first class mail, postage prepaid, on:

Office of the Secretary
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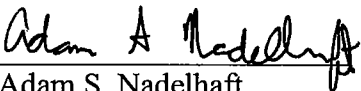
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